IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 23544 of 2007(C)

PETITIONER:

M.MOHANALAKSHMI, W/O RAJKUMAR,
RAJ BHAVAN(MANGATTU HOUSE),
KUNDAYITHODE, P.O.KOLATHARA,
CHERUVANNUR VILLAGE, KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

----

1. **CHERUVANNUR NALLALAM GRAMA PANCHAYATH,**
   REPRESENTED BY SECRETARY, P.O.KOLATHARA,
   CHERUVANNUR VILLAGE, KOZHIKODE.

2. **P.DIVAKARAN, S/O AYYAPPAN,**
   KUTTAKULANGARA, SASTHAPURI HOUSE,
   KUNDAYITHODU, P.O. KOLATHARA,
   CHERUVANNUR VILLAGE, KOZHIKODE DISTRICT.

3. **OMBUDSMAN,**
   LOCAL SELF GOVERNMENT INSTITUTION,
   TRIVANDRUM.

BY ADV. SRI.R.SUDHISH for R2
SRI.VINOD SINGH CHERIYAN
SRI.P.MOHANDAS
SRI.SRINATH GIRISH
SRI.MOHAMMED NIAS for R1
BY SR.GOVERNMENT PLEADER SRI. K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE NOTICE RECEIVED BY THE PETITIONER DTD. 5/12/2006.

EXT.P2: COPY OF THE COMPLETION REPORT SUBMITTED BY THE PETITIONER DTD. 26/12/2006.

EXT.P3: COPY OF THE COMPLETION REPORT SUBMITTED BY THE PETITIONER TO THE PANCHAYATH SECRETARY DTD. 13/02/2007.

EXT.P4: COPY OF THE NOTICE RECEIVED BY THE PETITIONER FROM THE 1ST RESPONDENT PANCHAYATH DTD. 26/07/2007.

EXT.P5: COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT DTD. 28/07/2007 UNDER THE RIGHT TO INFORMATION ACT.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT PANCHAYATH DTD. 31/10/2006.

EXT.R2(B): COPY OF THE SHOW CAUSE NOTICE ISSUED BY 1ST RESPONDENT PANCHAYATH TO THE WRIT PETITIONER DTD. 13/11/2006.

EXT.R2(C): COPY OF THE REPORT OF THE HEALTH INSPECTOR, PRIMARY HEALTH CENTER, CHERUVANNUR SEND TO THE 2ND RESPONDENT PANCHAYATH DTD. 14/11/2006.

EXT.R2(D): COPY OF 2ND SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT PANCHAYATH TO THE WRIT PETITIONER DTD. 5/12/2006.

EXT.R2(E): COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT PANCHAYATH TO THE TENANT DURGHA RANI DTD. 5/12/2006.

WPC.NO.23544/2007 C

EXT.R2(F): COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT PANCHAYATH TO THE TENANT ARCHANA BALAI DTD. 5/12/2006.

EXT.R2(G): COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT PANCHAYATH TO THE TENANT SUBRAMANIAM DTD. 5/12/2006.

EXT.R2(H): COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT PANCHAYATH TO THE TENANT SANTHOSH KUMAR DTD. 5/12/2006.

EXT.R2(I): COPY OF THE 2ND COMPLAINT SUBMITTED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT PANCHAYATH DTD. 7/12/2006.

EXT.R2(J): COPY OF THE PETITION SUBMITTED BY THE WRIT PETITIONER BEFORE THE PANCHAYATH DTD.26/12/2006.

EXT.R2(K): COPY OF THE DECISION TAKEN IN THE HEARING DTD. 18/12/2006.

EXT.R2(L): COPY OF THE DECISION OF THE 1ST RESPONDENT PANCHAYATH TO FILE A CASE AGAINST THE TENANTS FOR EVICTION DTD. 04/01/2007 NO.235 (16).

EXT.R2(M): COPY OF THE REPORT OF THE SANITARY INSPECTOR, SEND TO THE 1ST RESPONDENT PANCHAYATH RECOMMENDING THE EVICTION OF THE TENANTS DTD. 06/01/2007.

EXT.R2(N): COPY OF THE REPORT OF THE HEALTH INSPECTOR, PRIMARY HEALTH CENTER, CHERUVANNUR, SEND TO THE 1ST RESPONDENT PANCHAYATH DTD. 10/01/2007.

EXT.R2(O): COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT PANCHAYATH TO THE WRIT PETITIONER DTD. 11/01/2007.

EXT.R2(P): COPY OF THE LETTER SUBMITTED BY LD CLERK STATNG THAT THE WRIT PETITIONER REFUSED TO ACCEPT THE NOTICE HENCE REQUESTING PERMISSION FOR SUBSTITUTED SERVICE DTD. 11/01/2007.

EXT.R2(Q): REPORT OF THE SANITARY INSPECTOR STATING THAT THE WRIT PETITIONER HAS NOT SO FAR COMPLIED THE MEETING HELD ON 13/02/2007.

EXT.R2(R): COPY OF THE PETITION FILED BY THE HUSBAND OF THE WRIT PETITIONER DTD. 13/02/2007.

EXT.R2(S): COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT PANCHAYATH AGAINST THE WRIT PETITIONER AND 4 OTHERS BEFORE JFCM V, KOZHIKODE DTD. 03/02/2007.

EXT.R2(T): COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT BEFORE 3RD RESPONDENT OMBUDSMAN.

EXT.R2(U): COPY OF THE COUNTER STATEMENT FILED BY 1ST RESPONDENT PANCHAYATH BEFORE 3RD RESPONDENT OMBUDSMAN DTD. 26/06/2007.

EXT.R2(V): PHOTO OF THE SPOT.

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 23544 OF 2007

Dated this the 17th day of September, 2007

JUDGMENT

There is controversy between the petitioner and the party respondents and also the 1st respondent as to whether in compliance with the demolition order passed by the Panchayat pursuant to an interim order passed by the 3rd respondent-Ombudsman, the 2nd respondent has actually demolished and removed the leach pit put up by him.

According to the petitioner, even before the Ombudsman had passed the order of demolition, the petitioner had removed the pit in question. Counsel for the 2nd respondent, Sri.Vinod Singh Cherian and Sri.Mohammed Nias, counsel for the Panchayat do not agree. According to them, the pit has not been demolished or removed at all. Under these circumstances, I am of the view that an inspection is to be conducted by the Panchayat Secretary with notice to the petitioner and the 2nd respondent and in their presence to verify whether the petitioner's claim that he has already removed the pit in question is correct. Accordingly, I dispose of the Writ Petition itself issuing the following directions:

The Secretary of the Panchayat will take up Ext.P3, fix a date for

local inspection and inform the petitioner and the 2nd respondent of the date and time of the local inspection. He will conduct the local inspection in the presence of the petitioner and the 2nd respondent so as to verify whether the petitioner's claim in Ext.P3 that the objectionable pit has been removed is correct. On the basis of what is revealed from the local inspection the petitioner and the 2nd respondent will be heard by the Secretary of the Panchayat who will pass final orders on Ext.P3. In view of the above directions Ext.P4 is quashed.

PIUS C. KURIAKOSE, JUDGE

btt